IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8429 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDUBHAI TRIKAMBHAI PRAJAPATI

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

MR YM THAKKAR for Petitioner

MR DEEPAK DAVE for MR AD OZA for Respondent No. 1

MS SEJAL K MANDAVIA for Respondent No. 2 and 3

None present for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/08/2000

ORAL JUDGEMENT

1. Having heard the learned counsel for the parties,

I am satisfied that this petition deserves to be allowed.

2. The petitioner was appointed as a primary teacher in primary school of Village Sigam of Jambusar Taluka District - Bharuch on 27th January, 1981. In August-1984, the petitioner was transferred from the primary school of Village-Sigam to the Village-Kimoj of Bharuch District. In that very year, the petitioner requested to the concerned authorities for his request transfer from Bharuch District to Ahmedabad District. In June, 1991, the petitioner was transferred to the primary school of Village Nimaj of Taluka-Jambusar, District-Bharuch. In January, 1992, he was transferred to Village Rampur of Jambusar taluka. Thereafter, there was an another transfer of the petitioner in the same Taluka. The respondent no.1 under its order dated 29th May, 2000 accepted the petitioner's request made in the year 1984 for his request transfer to Ahmedabad District and accordingly, the order has been made. This order was received by the petitioner on 22nd June, 2000. On 26th June, 2000, the petitioner preferred representation against this order to the officer concerned inter alia requeting that the petitioner is now not willing to go to Ahmedabad District after 16 years of his making request. He has further stated that this order, if is accepted by the petitioner, he has to lose his seniority of 19 years in the job. This representation is not decided by the concerned officer and on 6th July, 2000, the petitioner was relieved from the primary school where he was posted. After this, the petitioner preferred an another representation on 11/7/2000 to the concerned officer, but, no decision has been taken thereon and hence, this petition.

3. On 31st July, 2000, this matter was admitted and interim relief in terms of para-6B has also been granted which reads as under :

"(B)Your Lordships may be pleased to stay the further execution, operation and implementation of the impugned order of transfer dtd. 29.5.2000, passed by the District Primary Education Officer, Ahmedabad, pending admission, hearing and final disposal of this petition;"

4. It is submitted by the counsel for the petitioner orally that after the order of this court dated 31st July, 2000, the petitioner submitted his application for joining at Urdu Kanyashala, Jambusar from where he was relieved on 6th July, 2000, but he was not permitted to join.

5. The learned counsel for the respondent contended that when the petitioner made request for inter-district transfer, it has to be accepted. As the petitioner's name was at Serial No. 919 of the request-transfer and this long period has been taken by the respondent in accepting his request. The petitioner now cannot be allowed to back out from his request.

6. I do not find any substance in this contention of the learned counsel for the respondent. It is true that at one point of time, the petitioner has applied for request-transfer to Ahmedabad District, but, if it is not accepted by the Government for 16 years, he has all the right to given up his request and for cancellation of the order now passed transferring him from District Bharuch to Ahmedabad District. By passage of time, the petitioner has to consider his own future and at this stage, in case he is transferred after 19 years and it is detrimental to his future service prospects, he can legitimately give up his prayer. The learned counsel for the respondent has failed to show any provision from the statutory rules or circular or guidelines, etc. where once a request has been made and if it is accepted, it has to be carried out by the petitioner. It is always open to the petitioner to withdraw the request. Another contention raised by the learned counsel for the respondent that this request was not withdrawn by the petitioner earlier to this order, is of no substance. It is true that it has not been withdrawn in advance, but when this order has been passed, he can at this stage legitimately can withdraw the same.

6. In the result, this Special Civil Application succeeds and the same is allowed. The order dated 29th May, 2000 is quashed and set aside. Rule is made absolute. No order as to costs. Direct service is permitted.

(S.K. Keshote, J.)

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